IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.186 OF 2002
IN
SUIT NO.4344 OF 2001

Anil Jungle @ Mohan Pandey ..Plaintiff.

Vs.

Mr.Hemant B. Dalal & Ors. ..Defendants.

Mr.B.Unnikrishnan for the Plaintiff.
None for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 1ST DECEMBER, 2005

P.C. :

The suit is filed for a declaration that Defendant Nos.1 and 2 are trespassers in the suit premises being a room admeasuring 351 sq. ft. in a building at Khar, Mumbai. The Plaintiff has also sought a declaration that Defendant Nos.1 and 2 and persons claiming through them have no right, title and interest in the said premises. The Plaintiff has further sought a declaration that he alone is entitled to occupy the said premises.

2. Finally, the Plaintiff has sought a decree directing Defendant Nos.1 and 2 or anybody found in the premises to hand over possession thereof to him. The Plaintiff's case is that he obtained the

premises on tenancy basis from Defendant No.3 who was the erstwhile tenant. This was in 1994. Defendant No.3 admitted the same. At that time, the original owners were the Mishra family.

3. The Plaintiff's case is that in 1998 he was forcibly dispossessed from the said premises by Defendant Nos.1 and 2 who purchased the building from the Mishras.

4. The only reason I am inclined to pass the present order is that Defendant Nos.1 and 2 have in their affidavit admitted that the Plaintiff was in possession. It is not their case in the affidavit in reply that they are in possession. Their only case in the affidavit in reply is that in 1994 the Plaintiff sold his interest in favour of one Smt. Shobhana Ruparelia and handed over vacant possession of the premises to her.

5. The said Shobhana Ruparelia is not a party to this suit and therefore no orders can be passed against her. However, as it is not the case of Defendant Nos.1 and 2 that they are in possession of the said premises or that they were entitled to dispossess the Plaintiff, the order I intend

passing, cannot affect their rights in any manner.

6. In the circumstances, the following order is passed :

i) The Court Receiver, High Court, Bombay, is appointed Receiver of the suit premises with all powers under Order XXXX Rule 1 of the C.P.C.

ii) The Court Receiver shall however not dispossess any third party found in possession of the said premises including the said Smt. Shobhana Ruparelia.

iii) Further, if any party other than the Defendants is found in possession, the Receiver shall not insist on security or royalty. The Receiver shall appoint such person as his agent without security or royalty. Such third party shall also be at liberty to apply to have this order vacated.

Notice of Motion stands disposed of accordingly.